Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Federal-State Joint Board on Universal Service	)	CC Docket 96-45
Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge	)	CC Docket Nos. 96-262, 94-1, 91-213, 95-72

REPLY COMMENTS OF GTE ON PETITIONS FOR RECONSIDERATION

GTE Service Corporation and its affiliated domestic telephone operating and wireless telecommunications companies[1] (collectively, "GTE"), respectfully submit these Reply Comments in response to certain comments filed in regard to the petitions for reconsideration of the Federal Communications Commission's ("FCC" or "Commission")

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[1] GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., GTE Hawaiian Tel International Incorporated, GTE Communications Corporation, GTE Mobilnet Incorporated, Contel Cellular Inc. and GTE Airfone Incorporated.

Fourth Order on Reconsideration in CC Docket No. 96-45, *Report and Order* in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72.[2]

I. ELIGIBILITY OF NON-CARRIER COMMUNICATIONS PROVIDERS

GTE agrees with those commentors[3] who have persuasively established that the Commission need not and ought not re-examine its position that state networks, wide area networks ("WAN") or instructional television fixed stations ("ITFS") should be eligible for universal service funding. As defined by the Act,[4] these entities are not telecommunications carriers providing common carrier telecommunications services and are, therefore, ineligible for USF support.

II. APPLICATION OF LOWEST CORRESPONDING PRICE (LCP) TO INTERNET ACCESS AND INTERNAL CONNECTIONS

None of the commentors[5] opposed US West's request that the Commission clarify that Internet access and internal connections are exempt from the LCP requirement and to the extent that these non-telecommunications services are exempt, the exemption applies regardless of the status of the provider. GTE concurs that this issue warrants clarification.

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[2] Federal-State Joint Board on Universal, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, *Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-242, 94-1, 91-213, 95-72*, FCC 97-420 (released December 30, 1997) (hereinafter "*December 30 Order*"), *pets. for review pending*

[3] Ameritech at 4, Bell Atlantic at 4, BellSouth at 5..

III. APPLICATION OF THE *DE MINIMIS* EXEMPTION

GTE concurs with those commentors supporting reconsideration of the Commission's decision to raise the *de minimis* contribution threshold from $100 to $10,000 and to require facilities-based service providers to count resellers as end users only if notified that the reseller is exempt.[6] As a result of the higher *de minimis* threshold, a significant number of entities, particularly resellers, will qualify for the exemption from direct universal service contributions[7] and, as AT&T (at 5) correctly points out "the potential for abuse of the current $10,000 exemption from contribution obligations is substantial." GTE an administrative burden on facilities-based providers.

GTE concurs with PCIA (at 5) that the Commission's decision imposes an administrative burden on facilities-based carriers. First, the Commission's rules require that facilities-based carriers be able to identify customers as resellers in order to refrain from including revenues derived from resellers on Universal Service Worksheets. GTE submits that a facilities-based carrier may not be aware that a customer is a reseller. Resellers often cannot be identified as such because the Commission requires that resellers be offered the same rate plans available to other customers. Generally, facilities-based carriers do not require a customer to divulge its planned use for the service. In addition, a reseller may be reluctant to disclose its business plans to the

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[5] Ameritech at 6, Bell Atlantic at 6, BellSouth at 4.

[6] AT&T at 5, PCIA at 12.

[7] Based on the Universal Service Worksheets submitted, the Commission estimates that raising the threshold will exempt an additional 1600 entities. *December 30 Order* at 165 (¶ 297).

underlying carrier. Moreover, even if the facilities-based carrier knows that a customer is reselling, that customer may also use the services purchased in a non-resale manner. These problems are exacerbated by the fact that some carrier billing systems may not be designed to distinguish resellers from non-resellers, nor to distinguish exempt resellers from non-exempt resellers.

Any USF contribution system which does not double count wholesale transactions must be able to distinguish between wholesale and retail transactions. However, it is clear that when a service is purchased for resale, it is the purchaser (the reseller), and not the seller (underlying carrier), that is in a position to know that the service is being resold. The Commission's current rules are flawed because they place much of the burden of this determination on the underlying carrier.

As noted above, the Commission requires resellers to notify facilities-based carriers if the reseller qualifies for the *de minimis* exemption. Unless notified, facilities-based carriers are required to exclude revenues derived from providing service to resellers from their Universal Service Worksheets. This system, however, creates a incentive for resellers to avoid making universal service contributions.[8] Thus, if a reseller fails to notify the underlying carrier that it is exempt from contributing – either because it is unaware of its universal service obligations or because it knows its obligations but wants to avoid compliance – then, as AT&T predicts, the reseller can

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[8] In addition, the present system places an undue burden on facilities-based carriers to ensure that resellers meet their universal service contribution obligations.

escape making any contribution to the universal service fund.[9] As such, unlike the facilities-based carrier, the reseller will incur no universal service contribution costs and will therefore gain an unwarranted competitive advantage.[10]

Rather than imposing an unnecessary administrative burden on the underlying carriers which, in turn, creates the incentive for resellers to gain a competitive advantage, the Commission should reconsider its rules. *First*, GTE concurs that the Commission should reverse its decision and reduce the amount of the *de minimis* exemption threshold to the original $100 level. Based on the concerns expressed by the commentors, it is obvious that no party considers $10,000 to be *de minimis,* particularly when the impact to the contribution base, in aggregate, is considered. By reducing the threshold to $100, the Commission would drastically reduce the number of entities, including resellers, who may take advantage of the exemption. *Second*, the Commission should require that facilities-based carriers treat all customers as end users unless otherwise notified. Thus, a facilities-based carrier would assume that all customers are end users to be included in the Universal Service Worksheets unless the customer informs the carrier (1) that it operates as a reseller; and (2) that it does not qualify for the *de minimis* exemption.

From a practical perspective and for purposes of administrative ease, GTE's approach is easily implemented. By changing its rules in this manner, the Commission would create an incentive for resellers to accurately report their status to underlying

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[9] AT&T at 5.

[10] AT&T at 6, BellSouth at 2.

carriers and eliminate the incentive for some resellers to avoid contribution. Moreover, this rule change would ensure that all resellers' revenues are included, even if some were ignorant of the rules. Finally, allowing facilities-based carriers to assume that all customers are end users would be consistent with the manner in which facilities-based carriers treat resellers outside of the *de minimis* exemption context. For example, GTE's commercial mobile radio service ("CMRS") affiliate purchases long distance service from several carriers. Corporate staff uses some of the capacity for their long-distance calling needs and some is resold to CMRS end users. Under GTE's approach, long distance providers, however, would treat all revenues derived from the customer as end user revenues for universal service purposes unless the customer (here, GTE) informs the carrier that it is entitled to a waiver of that policy based on reseller activity. This system ensures that the customer has the opportunity to identify usage as end user or resale.

In that respect, BellSouth's proposal (at 2) which determines the contributions of each contributing carrier based on its retail revenues excluding exempted resold revenues from the calculation has merit. GTE certainly agrees with BellSouth and PCIA's fundamental concerns that if the $10,000 threshold is truly *de minimis*, neither the Commission nor any facilities-based carrier should be concerned about the foregone contribution to the federal universal service fund[11] and to the extent that an entity qualifies for the exemption, the burden should be placed on the *de minimis* carrier to notify the fund administrator, relieving the underlying carrier from any intermediate

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[11] BellSouth at 2; PCIA at 5.

responsibility. Both GTE and BellSouth would relieve the underlying carrier of the burden of determining whether or not a reseller is exempt under the *de minimis* provision. However, under BellSouth's proposal, such a carrier would be treated as a reseller by the underlying carrier, while under GTE's proposal the same carrier would be treated as an end user. BellSouth's proposal is logically consistent, and it addresses BellSouth's concern that the underlying carrier should not become responsible for the reseller's contribution if the reseller is exempt. For these reasons, BellSouth's approach is preferable to the current rules.

GTE believes that the proposal outlined here has further advantages over that suggested by BellSouth. First, it is simpler to administer, since an exempt reseller would not be required to notify the underlying carrier of anything, nor would the underlying carrier be required to treat that carrier differently from any other end user customer. Second, it minimizes any incentive the reseller might have to mischaracterize itself as exempt. An exempt carrier would not have to remit contributions to the fund administrator, but would be subject to any passthrough mechanism the underlying carrier might use to recover its own contributions to the fund.

GTE shares BellSouth's concern that, if exempt carriers are treated as end users, the underlying carrier would become responsible for recovery of any USF contributions associated with the *de minimis* revenue. However, GTE believes that this concern will be adequately addressed if two conditions are met. First, the threshold should be chosen so that the revenue involved really is *de minimis*. The Commission should reduce the threshold from $10,000 to $100. Second, every carrier that contributes to the fund should have a clear ability to pass through its contribution to its

own end users.[12] If this condition is met, then the underlying carrier can recover any contribution it must make to the fund, resulting from the reseller's *de minimis* revenue, through the charges it passes through to the reseller. GTE agrees with BellSouth that the reseller's exemption should not create any additional burden for the underlying carrier that cannot be recovered through charges to the exempt carrier itself.

IV. CONCLUSION

GTE respectfully submits that the Commission should deny the petitions for reconsideration filed on behalf of state networks, WANs or ITFS. These entities are clearly not telecommunications carriers, and as such, are ineligible to receive universal service support. GTE concurs with those commentors who did not oppose US West's request that the Commission clarifies the application of LCP to Internet access and internal connections. GTE joins those commentors and petitioners who seek reconsideration of the Commission's decision to increase the *de minimis* exemption from $100 to $10,000. However, regardless of whether the Commission retains the current exemption level, GTE recommends an administratively practical approach in which, absent affirmative notification by a reseller, facilities-based providers would treat all resellers' revenues as end user revenues in order to reduce the administrative

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[12] In the Matter of Federal State Board on Universal Service, Report to Congress, GTE Comments, CC Docket No. 96-45, DA 98-2, January 26, 1998.

burden the Commission's current rules impose on facilities based providers, particularly if the Commission establishes a competitively neutral means through which all carriers may recover their Federal universal service contributions directly from their end users.

Dated: April 3, 1998

Respectfully submitted,

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Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Reply Comments of GTE on Petitions for Reconsideration" have been mailed by first class United States mail, postage prepaid, on April 3, 1998 to all parties of record.

Judy R. Quinlan